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January 28, 2019

Nathaniel Aguda  
Ministry of the Environment, Conservation and Parks  
Environmental Policy Branch  
40 St. Clair Avenue West, 10<sup>th</sup> Floor  
Toronto ON M4V 1M2

Dear Mr. Aguda:

**RE: ERO Posting 013-4208, Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan**

The Residential and Civil Construction Alliance of Ontario (RCCAO) and Supporting Ontario Infrastructure Investments and Lands (SOiil) are pleased to respond to MECP's *Preserving and Protecting our Environment for Future Generations: A Made in Ontario Environmental Plan* (the Plan). RCCAO and SOiil understand and support the MECP's approach to establish policy, plans and approaches that both recognize and address Ontario's current environmental and fiscal challenges.

**EXECUTIVE SUMMARY**

The following comments are focussed on the elements in the Plan that cover the topic of clean soil. We have been a major contributor over the last eight years working with the Ministry and other stakeholders on responsibly addressing excess construction soil management. These activities have included support for the Ministry's *Best Management Practices* (BMP) Guide released in January 2014 and ongoing stakeholder engagement.

We have been generally supportive of the Ministry's December 2016 *Excess Soil Management Policy Framework* of 21 Action Items. This Framework recognized the need for a sound detailed implementation plan, accountability and an itemized timetable to get required results. Most recently we commented, with significant concerns, on the Ministry's *Excess Soil Management Regulatory Proposal EBR posting #013-2774* (April 16, 2018). This proposal is viewed as too complicated and technically complex, given the number of other regulations involved and virtually impossible to implement in a timely, straightforward manner. Most importantly we have a fundamental concern that this regulatory proposal, while appearing strong on technical detail, has significant shortcomings with respect to encouraging the beneficial reuse of excess, clean construction soils.

As recognized in the MECP's most current ERO proposal, the responsible reuse of clean soil requires clear rules and standards that facilitate the safe, cost-effective and beneficial reuse of excess soils.



Accordingly, we recommend the MECP revisit the implementation of the original Ministry BMP approach, utilizing a pragmatic, managed implementation plan that emphasizes public outreach, proper stakeholder training, pilot testing of critical elements and the creation of an interim excess soil governance entity to oversee and be accountable for the success of this needed program.

In summary, we, as vested stakeholders, have been engaged in the process of improving excess soil management practices in Ontario for several years. There is an opportunity to streamline handling practices that will reduce infrastructure project costs while environmentally and responsibly reusing a valuable resource and reducing greenhouse gas emissions in Ontario.

Following are general comments that describe in more detail recommended steps to recognize how the proper handling of excess clean soils can contribute to an effective *Made in Ontario Environmental Plan*. Previous efforts regarding the attempted implementation of agreed upon industry and government excess soil management practices simply need to be effectively acted upon with minimal new regulatory requirements imposed.

### **GENERAL COMMENTS**

Consistent with the Plan's general objectives, RCCAO and SOiil would like to recommend some immediate solutions on the issue of excess soils. These recommendations align with the Plan's need to recover the value of "waste" soils as a resource based on the application of clear rules. These actions would be driven and managed by the private sector as described by the MECP and would most importantly recognize and include the municipal sector in program execution and landfill-related approvals.

As echoed in the Plan, cutting red tape and modernizing approvals with clear measurement and markers are fundamental to the final approved managing process. While our recommendations and proposals, as described in the preceding, align with the Plan's general objectives, our specific focus is on the elements in the Plan that cover the issue of clean soil.

RCCAO and SOiil request that the existing MECP's Excess Soils Engagement Group (ESEG) and the Market Working Group (MWG) be reconvened as soon as possible to revisit the 2016 *Excess Soils Management Framework* of 21 Action Items. This Framework had significant industry and MECP input and addresses the key elements involved in improving excess clean soil handling. This document remains a strong tool to build on, but several of the action items need realignment with the MECP's new objectives and approach in this area.

The ESEG should reprioritize the Framework's 21 Action Items with an initial emphasis on elements supporting the effective implementation of the Ministry's 2014 BMP Guide. For instance, Action Item #1 specifically referenced the MECP working with partner ministries to develop a new EPA regulation. As outlined in RCCAO's and SOiil's written response to EBR # 013-2774 in June 2018, we have concerns



with the apparent complexity of the EBR proposal. Our specific comments and recommendations cover 13 areas of concern and have yet to be responded to, although we understand that Ministry staff has been receptive to many of the recommendations such as the definition of waste.

The development of proposed new regulation(s) and the subsequent harmonization with existing regulations represents a long, complicated process to date that puts significant uncertainty around many of the other twenty actionable items. This regulatory prerequisite, as currently outlined in EBR #013-2774, also fundamentally goes against the Plan's stated objectives of reducing red tape and modernizing approvals in Ontario.

Action item #1 must be revisited but not at the expense of delaying the other action items directly supporting the implementation and adoption of the MECP's 2014 BMP approach. These elements should proceed as quickly as possible as an initial guideline approach until a final, (hopefully streamlined) new regulatory framework is finalized. A working example of this approach in Ontario was the development and adoption of the Ontario Contaminated Site Guidelines in the 1990's that were brought into regulation in 2004 with the *Brownfield Act* and Regulation 153/04.

Advancing the excess soil management file can provide a working model of how to put in place a "Smart Regulatory" model in Ontario based on similar approaches used in other jurisdictions such as the United Kingdom where beneficial soil reuse significantly redirects excess soils from limited landfill capacity. Adopting this type of approach and incorporating existing local municipal regulatory requirements will result in a Made in Ontario solution that best meets stakeholder needs and one that can be implemented in a timely fashion. Given efforts in this area over the last eight years, Ontario is long overdue to put in place a managed process with an accountable timetable to get results.

The key to moving ahead with a successful excess soil program and the eventual adoption of a realistic and workable regulatory framework in Ontario is the creation of a change mechanism to make it all happen in a timely fashion. It is recommended that a new governance body be created to oversee the finalization of the new excess soil regulatory framework as well as the interim implementation plan for the supporting program components based on the 21 Action Items. This proposed governance body, based directionally on the successful U.K. model, is intended to encourage the beneficial reuse of excess soils locally. This governance body would engage industry, government and academic representatives to nimbly develop, approve and implement final excess soil action plan items.

The creation of a dedicated excess soil governance body has been proposed to the Ministry in the past in the form of a Soils Ontario entity. At the time the Ministry commissioned EY to prepare a report on "Market Based Tools for Excess Soil Management" which was circulated to ESEG members in August 2017. Given the stated objectives of the MECP's new Plan many of the EY recommendations do not fit with the Province's mandate to contain costs. RCCAO and SOiil would appreciate the opportunity to further describe the Soil Ontario proposal and how it best aligns with current provincial direction.



## **SPECIFIC PLAN RECOMMENDATIONS**

With specific reference to the sections of the Plan covering Clean Soil, RCCAO and SOiil recommend several definitive action items for the MECP to consider as next steps. These recommendations are consistent with our earlier more detailed comments and recommendations made to the Ministry in our June 2018 response to the MECP's Excess Soil Management Regulatory Proposal EBR Posting #013-2774.

To move ahead in a timely fashion on proposed excess soil regulatory reform there is a need to “re-constitute” the most recent regulatory proposal in the context of overall current government regulatory objectives and expectations. To make this happen with respect to advancing excess soil related items the following is recommended:

### **1. Reconvene the ESEG as soon as possible**

There is a need to advise ESEG stakeholders updated on the direction which is envisioned based on the responses to last year's EBR #013-2774 consultation. Clarity is required around how the Ministry sees both the original proposal and submitted new comments and how they fit within the framework of the new *Made in Ontario Environment Plan*. In terms of consistency with the new mandate, we recommend there be a revisit of the Excess Soil Management Policy Framework of 21 Action Items and prioritization of items supporting proper implementation of the BMP Guide. Regardless of final regulatory proposal details, the BMP guidelines will be a core component and we recommend that the Ministry move forward with applicable implementation support programs as originally intended.

### **2. Utilize ESEG as a steering committee to identify a smaller stakeholder Task Group which would be tasked with developing a robust implementation plan for action items**

ESEG has been an excellent sounding board to discuss policy direction but it is too large to implement strategic policies and programs. In addition, meetings organized by Ministry staff are held too infrequently. The proposed Task Group will assist with rolling out deliverables and could also be responsible for direct oversight of the excess soil management program, including the setting of a timetable and regular tracking of progress. The Task Group should include government, industry and academic stakeholders with the intent of becoming a formal, not-for-profit entity. Such an entity would be responsible for maintaining the currency of BMP guidelines, overseeing the proposed Excess Soil Management Plan (ESMP) Registry, developing and managing outreach and training programs, promoting Qualified Professional (QP) training, co-ordinating pilot tests and overseeing web-based soil matching initiatives.

### **3. Establish an Ontario “Smart Regulation” model for excess soil management to encourage effective beneficial reuse of soils**

Senior Ministry personnel in the past have been receptive to pursuing and creating a joint industry/government “Smart Regulatory” model based on the UK's successful CL:AIRE model. Based on the recommendations of an outside consultant (EY) to create an organizational



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structure that would result in a group composed of 6.5 FTE positions, two of which would be government staff. Unfortunately, ESEG members have not been afforded a chance to properly debate, but there is a view that it would be too top down and too expensive.

An alternative Smart Regulation model would involve the creation of a not-for-profit governance managing structure which would be at arm's length from the MECP but have accountability through joint industry / government participation and oversight through ESEG as a steering committee and ultimately the MECP. Reference is made to a "Soil Ontario" proposal presented to senior MECP representatives previously. Conceptually, initial seed government funding would create an entity which over time would become self financing.

**4. Revisit the full legal and liability implications of identifying excess soils as a waste by default as originally described EBR #013-2774**

The ability to responsibly and beneficially reuse excess soils from both new development and brownfield sites is severely restricted by the starting point where excess, clean soil is considered a waste by default. Progressive jurisdictions encourage the reuse of excess soils based on the material's end use where a risk-based approach is involved. This is of importance concerning the reuse of salt impacted (SAR) soil on infrastructure projects. Clear rules (e.g., BMP's) that facilitate excess soil handling as a beneficial reuse opportunity versus a waste have the potential to reduce project costs and extend the life of landfill sites.

**5. Gear up municipal outreach and training**

As the Plan states that the Ministry will provide municipalities and local communities with a say in landfill siting approvals, the reuse of excess soil locally can be the mechanism to reduce landfill requirements. RCCAO and SOiil have consistently promoted the advantages of a multi-ministry approach to implement a successful excess soil beneficial reuse managing system.

Municipal engagement is critical to raise awareness and ensure that municipal resources are used most effectively. MECP leadership through ESEG or the proposed governance group would work more closely on municipally-focussed initiatives including: adoption of standard excess soil reuse bylaws, acceptance of municipal contract and procurement practices which will encourage upfront planning for soil reuse options, including the creation of excess soil depots or soil management campuses. A better awareness of soil reuse options will also facilitate expedited approvals for municipal infrastructure projects.

**6. Launch pilot test projects to help determine what BMP programs work best technical topics (i.e. Beneficial Reuse Assessment Tool (BRAT), new standards, etc.).**

There are several excess soil handling associated initiatives that support the Plan and that could be pilot tested in parallel with redevelopment on final regulatory package. Initial pilot testing funding could come from the MECP's existing innovation budgets in house or developed, with



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academic participation, through the Ontario Centres of Excellence (OCE). Outcomes from these pilot tests would be incorporated and shared as part of the regulatory roll out and establishment of the final governance framework. Fast track pilot projects could encompass:

- (i) Developing and testing BMP training courses – ideally web based – which would target municipalities and the broader construction sector. For example, soil material haulers need to be properly engaged as a key player in responsibly moving excess soils.
- (ii) Recommending training courses and guidance documents for QP's and project leaders, with an initial focus on developing standard, consistent ESMP (Excess Soil Management Plan) requirements.
- (iii) Developing clear practices for beneficially reusing SAR impacted soils within road rights-of-way.
- (iv) Testing of digital systems to track truck and soil movements, with a view to 'big data' analysis.
- (v) Focusing on the growing hydro vac sector.

### **CLOSING COMMENTS**

RCCAO and SOiil continue to put significant time, effort and support into the development of responsible excess soil management practices supporting beneficial reuse clean soil in Ontario. From a general industry standpoint, we support the direction and principles that the MECP has recommended in the proposed *Made in Ontario Environment Plan*. Given the past eight years that joint industry and government stakeholders have worked on this issue, it is time to implement specific programs on an urgent basis.

Our recommendations are in alignment with previously identified action items. To ensure that the Ministry proceeds in an appropriate direction, re-engagement with ESEG members needs to happen soon. A meeting schedule, with the support of a Task Group, is necessary to prioritize work efforts and put in place an implementation process and timetable. This work effort would be in parallel to the longer-term efforts to define the most effective combination of best management practices and the proposed regulatory model to be used in Ontario.

Yours truly,

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